

could be left entirely to the Board's discretion. The Supreme Court of Minnesota sums up the matter thus: "Reciprocity and comity import the granting of a favor, which conception of itself would seem to negative the right to complain of its denial, except where such right is clearly given."<sup>6</sup> Then, too, administrative discretion would have considerable free play as to schools within the state, it having been determined in Missouri that quo warranto would lie against a medical school not recognized by the Board,<sup>7</sup> and in Ohio that the Board was the proper agency to determine in the first instance if a medical college was not reputable, and hence carrying on its activities contrary to its charter.<sup>8</sup> In this manner, a state could leave considerable power to administrative discretion, prevent unqualified persons moving from state to state without sufficient examination, and relieve the courts of passing on the technical questions raised in determining the sufficiency of a medical course.

W. H. M. '36.

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TAXATION—BANK DEPOSITS—DUE PROCESS.—Appellant company was organized in Delaware. It maintained there, through the Corporation Service Co., a duplicate set of books in fulfillment of the laws of that state. The company's plants were located in Ohio, and its principal business offices were in Wheeling, West Virginia, from which office all contracts were approved, checks received and deposited, and in which the Directors' meetings were held. West Virginia imposed an ad valorem property tax on bank deposits in the state. In an action brought to recover the tax paid under protest it was held, that the tax did not violate the due process clause of the Fourteenth Amendment. *Wheeling Steel Co. v. Fox*.<sup>1</sup>

It is well settled that a state may not tax any property not within its jurisdiction without violating the due process clause.<sup>2</sup> The rule is established that a state may tax tangibles permanently located within its boundaries.<sup>3</sup> The courts have applied the maxim *mobilia sequuntur personam* in determining the situs of intangibles for the purpose of taxation.<sup>4</sup> The courts have felt that this maxim affords protection against multiplied taxation.<sup>5</sup> This fact was strikingly illustrated in the case of *Burnett v. Brooks*.<sup>6</sup> There the decedent, a subject of great Britain and a resident of Cuba, left stocks and bonds in a New York bank. The court held that for the purpose of taxation the United States had jurisdiction and applied the maxim as between the states thereby avoiding the hardship of possible double taxation.

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<sup>6</sup> *Williams v. Minnesota State Board of Medical Examiners* (1913) 120 Minn. 313, 139 N. W. 500.

<sup>7</sup> *State v. St. Louis College of Physicians and Surgeons* (Mo. 1927) 295 S. W. 537.

<sup>8</sup> *State v. Hygeia Medical College* (1899) 60 Ohio St. 122, 54 N. E. 86.

<sup>1</sup> (May 18, 1936) 3 U. S. Law Week 959; 56 S. Ct. 773.

<sup>2</sup> *Farmers Loan & Trust Co. v. Minnesota* (1930) 280 U. S. 204.

<sup>3</sup> *Union Refrigerator Transit Co. v. Kentucky* (1905) 199 U. S. 194.

<sup>4</sup> *Blodgett v. Silberman* (1928) 277 U. S. 1.

<sup>5</sup> *Supra*, note 2.

<sup>6</sup> (1933) 288 U. S. 378.

Choses in action, employed in business transactions within a state, acquire a taxable situs in that state.<sup>7</sup> The rationale seems to be that it is property used within the state for the purpose of obtaining profit from its use and, therefore, it is of that kind of property that should contribute to the support of the protecting state. The maxim, *mobilia sequuntur personam* was said to be at most a legal fiction "its proper operation being to prevent a mischief, or remedy an inconvenience that might result from the general rule of law."<sup>8</sup>

The application of the "business situs" doctrine to circumstances as those which existed in the instant case seems justifiable. The centralization of business management in a state clearly takes the case out of the operation of the maxim since no element of hardship is present. N. C. '37.

TAXATION—STOCK DIVIDEND AS INCOME.—The petitioner in 1924 and 1926 purchased preferred stock in a corporation whose articles of incorporation provided that holders of preferred stock should receive annual dividends of seven dollars a share in cash or, at the option of the corporation, one share of common stock for each share of preferred. The preferred stock was redeemable at \$105 per share plus accrued dividends; and upon dissolution or liquidation was entitled to preferential payment of \$100 a share plus accrued dividend and no more. The common stock was entitled in such event to the assets of the company remaining after payment of the preferred. The company for the period of 1925 to 1928 inclusive, elected to pay the preferred dividends in common stock. The point at issue was whether under the Revenue Act of 1926 and 1928 one who purchases cumulative, non-voting, preferred shares of a corporation upon which a dividend is subsequently paid in common shares must, upon a sale or other disposition of the preferred shares, apportion their cost between the preferred and common for the purpose of determining gain or loss. In computing the profit realized by the petitioner the Commissioner allocated to the common stock so received, in each instance, a proportionate amount of the cost of the preferred thereby decreasing the resulting cost basis per share and increasing the income. On appeal: *Held*, that the dividends were not stock dividends within the terms of the statute. *Koshland v. Helvering*, Commissioner of Internal Revenue.<sup>1</sup>

This decision is clearly in line with the previous cases of *Eisner v. Macomber*,<sup>2</sup> and *Peabody v. Eisner*.<sup>3</sup> The effect of all the cases is that a stock dividend distributed to classes of shareholders who have pre-emptive rights to the stock issue in which the "dividend" is paid is not taxable. *Eisner v. Macomber* decided that such a dividend is not income within the meaning of the Sixteenth Amendment. The instant case decided that only such stock

<sup>7</sup> *New Orleans v. Stempel* (1899) 175 U. S. 309.

<sup>8</sup> *Ibid*, at p. 314 of 175 U. S.

<sup>1</sup> (May 18, 1936), 3 U. S. Law Week 942; Revenue Act of 1928, sec. 115 (f), c. 852, 45 Stat. 791, 822; Revenue Act of 1926, sec. 201 (f), c. 27, 44 Stat. 9, 11: A stock dividend shall not be subject to tax."

<sup>2</sup> (1919), 252 U. S. 189.

<sup>3</sup> (1917), 247 U. S. 347.